

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BEAU TOWNSEND FORD LINCOLN §
INC., d/b/a BEAU TOWNSEND §
FORD, §
§
Plaintiff, §
§
v. § CASE NO. 3:15-cv-400
§
DON HINDS FORD, INC. d/b/a § JUDGE THOMAS M. ROSE
DON HINDS FORD, §
§
Defendant. §

**AGREED ORDER
STAYING EXECUTION OF JUDGMENT PENDING APPEAL**

On October 16, 2017, the Court entered judgment (ECF No. 64) in favor of Plaintiff Beau Townsend Ford Lincoln Inc. d/b/a Beau Townsend Ford ("Beau Townsend Ford") and against Don Hinds Ford, Inc. d/b/a Don Hinds Ford ("Don Hinds Ford") in the amount of \$786,589.41, plus post-judgment interest and costs (the "Judgment"). On November 6, 2017, Don Hinds Ford timely appealed the Judgment to the United States Court of Appeals for the Sixth Circuit. (ECF No. 66.)

Don Hinds Ford has moved the Court to stay execution of the Judgment pending appeal and has sought leave to secure the judgment pending appeal through a letter of credit. The parties have advised the Court that they have agreed with respect to the terms of a letter of credit (together with any substitute or replacement for it acceptable to Beau Townsend Ford, the "Letter of Credit") in the amount of \$850,000.00, the form of which is attached hereto as Exhibit A, with appropriate redactions, to serve as

adequate security to stay the execution on the Judgment, and any proceedings to enforce it, pending appellate proceedings, pursuant to FED. R. CIV. P. 62(d).

Accordingly, **IT IS HEREBY AGREED AND ORDERED** that Don Hinds Ford's Motion to Stay Execution (ECF No. 67) is hereby **GRANTED**. All proceedings to enforce the Judgment (ECF No. 64) are hereby stayed as of November 6, 2017, pending the final resolution of all appellate proceedings. Further, the Letter of Credit is approved as adequate security under FED. R. CIV. P. 62(d) during appellate proceedings in this matter. Don Hinds Ford shall tender the original Letter of Credit to Beau Townsend Ford within three days from the date of this Order.

IT IS FURTHER AGREED AND ORDERED that Beau Townsend Ford may make demands for payment on the Letter of Credit, and shall be entitled to the proceeds thereof, without further order of this Court and consistent with the terms of the Letter of Credit and this Order upon the occurrence of one or more of the following events ("Demand Events"):

- A. The Judgment or any portion of it in this case has become final and nonappealable (as defined below), in which circumstance Beau Townsend Ford may make demands in an aggregate amount for the Judgment or portion of the Judgment that has become final and nonappealable in its favor, including post-judgment interest and costs; or
- B. The issuer of the Letter of Credit has provided notice to Beau Townsend Ford of its election not to renew the Letter of Credit or the Letter of Credit is otherwise subject to expiration within sixty days or less, in which circumstance Beau Townsend Ford may make demand for the full amount then available under the Letter of Credit.

In the event that one or more Demand Events has occurred, Beau Townsend Ford may elect, in its sole discretion, to present demands on the Letter of Credit on the basis of one or more such Demand Events, independently or in any combination.

IT IS FURTHER AGREED AND ORDERED that, for purposes of this Order, the phrase "has become final and nonappealable" means:

- A. that the United States Court of Appeals for the Sixth Circuit has affirmed the Judgment in favor of Beau Townsend Ford with respect to any amount of damages notwithstanding any reversal or remand for further proceedings with respect to any other amount or type of damages or other matter (the "Affirmed Judgment"), and that Don Hinds Ford's time to petition for certiorari in the United States Supreme Court or move for reargument, rehearing, or reconsideration in the Court of Appeals with respect to the Affirmed Judgment has expired, and:
 - i. as to which no petition for certiorari in the Supreme Court or motion for reargument, rehearing, or reconsideration shall then be pending in the Court of Appeals, or
 - ii. as to which any right to petition for certiorari, reargument, rehearing, or reconsideration shall have been waived in writing by Don Hinds Ford, or
 - iii. in the event that a writ of certiorari in the Supreme Court, or reargument, rehearing, or reconsideration with respect to the Affirmed Judgment has been sought in the Court of Appeals, such certiorari, reargument, or rehearing has been denied or dismissed and the time to take any further appeal, petition for

certiorari, or move for reargument, rehearing, or reconsideration in the Supreme Court or in the Court of Appeals with respect to the affirmed judgment shall have expired; or

B. that Don Hinds Ford's appeal in the United States Court of Appeals for the Sixth Circuit has been dismissed or otherwise terminated without any order in favor of Don Hinds Ford and that Don Hinds Ford's time to move for reargument, rehearing, or reconsideration in the Court of Appeals, or petition for certiorari in the Supreme Court with respect to that dismissal or termination, has expired, or in the event that Don Hinds Ford timely moves for reargument, rehearing, or reconsideration in the Court of Appeals, or petitions for certiorari in the Supreme Court, that such motion or petition has been denied;

IT IS FURTHER AGREED AND ORDERED that, so long as Don Hinds Ford and the issuer maintain the Letter of Credit in compliance with the above terms, execution of the Judgment (ECF No. 64) is stayed and no execution may issue on that Judgment nor may any proceedings be taken to enforce the Judgment during appellate proceedings in this matter, other than as authorized in this Order. Nothing in this paragraph shall preclude Beau Townsend Ford from drawing upon the Letter of Credit consistent with the terms of this Order. In the event that Don Hinds Ford does not maintain the Letter of Credit in compliance with the above terms, or the bank issuing the Letter of Credit fails to honor a demand for payment thereunder for any reason, no stay applies and execution on the Judgment may commence.

IT IS FURTHER AGREED AND ORDERED that, in the event the Judgment is vacated or reversed in its entirety in a final and nonappealable order of an appellate

court so that no amount remains owing to Beau Townsend Ford, Beau Townsend Ford shall immediately return the original Letter of Credit to Don Hinds Ford upon the demand of same from Don Hinds Ford.

IT IS FURTHER AGREED AND ORDERED that, upon a showing of good cause, either party may request that the Court modify the terms of this Order.

SO ORDERED.

Dated: November 8, 2017

s/Thomas M. Rose
UNITED STATES DISTRICT JUDGE

AGREED:

/s/ Brian S. Jones

RONALD C. SMITH (*pro hac vice*)
JEFFREY B. HALBERT (*pro hac vice*)
BRIAN S. JONES (*pro hac vice*)
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**ATTORNEYS FOR DON HINDS
FORD, INC. D/B/A DON HINDS
FORD**

/s/ James M. Hill

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E-Mail: kchapman@jmhilllaw.com

**ATTORNEY FOR BEAU
TOWNSEND FORD LINCOLN,
INC.**

Exhibit “A”

The Huntington National Bank

International Services - EA2E85

7 Easton Oval

Columbus, OH 43219

SWIFT: HUNTUS33

614-480-INTL (4685) - Customer Service

International@Huntington.com



Irrevocable Standby Letter of Credit

Beneficiary: Beau Townsend Ford Lincoln, Inc.
1020 West National Road
Vandalia, OH 45377

Applicant: Don Hinds Ford, Inc.
12610 Ford Drive
Fishers, IN 46038

Issue Date: 10/30/17
Expiration Date: 10/31/18
Amount: USD850,000.00
Our Reference: OSB.00 [REDACTED]

We hereby establish our Irrevocable Standby Letter of Credit No. OSB.00 [REDACTED] in your favor for the account of Don Hinds Ford, Inc., 12610 Ford Drive, Fishers, IN 46038 up to an aggregate amount of USD850,000.00 (Eight Hundred Fifty Thousand and 00/100 United States Dollars) available by your sight draft(s) drawn on The Huntington National Bank marked "Drawn under The Huntington National Bank Irrevocable Standby Letter of Credit No. OSB.00 [REDACTED] dated 10/30/17" accompanied by the following document(s):

1. Beneficiary's statement signed by one purporting to be an authorized signer of the Beneficiary stating "Beau Townsend Ford Lincoln, Inc. is entitled to draw on the Letter of Credit pursuant to the terms of the Order governing the stay of execution and Letter of Credit issued by the Court in the case styled Beau Townsend Ford Lincoln, Inc. d/b/a Beau Townsend Ford v. Don Hinds Ford, Inc. d/b/a Don Hinds Ford, No. 3:15-cv-400, In the United States District Court for the Southern District of Ohio, and the amount drawn is due and owing."
2. Original Letter of Credit and any amendments.

The expiration date of this Irrevocable Standby Letter of Credit shall be automatically extended without amendment for successive one year periods from the present and each future expiration date, unless we notify you by registered mail, or other receipted means of delivery sent to your above-stated address 30 or more days before the then current expiration date that we elect not to extend the expiration date. The expiration date is not subject to automatic extension beyond 10/31/20 and any pending automatic one-year extension shall be ineffective beyond that date. Said notice will be sent to the address indicated above, unless you notify the Issuing Bank of a change of your address.

The Huntington National Bank
International Services - EA2E85
7 Easton Oval
Columbus, OH 43219
SWIFT: HUNTUS33
614-480-INTL (4685) - Customer Service
International@Huntington.com



Beneficiary's notice of such change of address must be in writing referencing this Letter of Credit Number and must be sent by registered mail, certified mail or courier service to the Issuing Bank's address set forth hereinbelow. Any notice to us will be deemed effective only upon actual receipt by the Issuing Bank.

We hereby agree with you that drafts drawn under and in strict compliance with the terms of this credit will be duly honored by us upon presentation at The Huntington National Bank, Attn: International Services EA2E85, 7 Easton Oval, Columbus, Ohio 43219, on or before our close of business on 10/31/18 or any automatically extended expiration date.

Except as otherwise expressly stated herein, this Letter of Credit is issued subject to the International Standby Practices of the International Chamber of Commerce ("ISP98"). This Letter of Credit shall be deemed to be a contract made under the laws of the State of Ohio and shall, as to matters not governed by ISP98, be governed by and construed in accordance with the laws of the State of Ohio, other than its conflict of laws rules, which would result in the application of the law of any jurisdiction other than the laws of the State of Ohio.

Sincerely,

Robert Starbuck
Authorized Signature

The Huntington National Bank

International Services - EA2E85

International

7 Eastern Oval
Columbus, OH 43219

Columbus, OH 432
SWIFT: HUNTUS33

614-480-INTL (4685) - Customer Service

814-488-INTL (4683) - Custom
International@Huntington.com



Amend date: 11/02/17

Standby Letter of Credit
Advice of Amendment
OSB.00 [REDACTED]

Beneficiary:

Beau Townsend Ford Lincoln, Inc.
1020 West National Road
Vandalia, OH 45377

Applicant:

DON HINDS FORD, INC.
12610 FORD DRIVE
FISHERS, IN 46038

We hereby amend our Irrevocable Standby Letter of Credit OSB.00 [REDACTED] issued in your favor for the above referenced applicant as follows:

NOTIFICATION TO BENEFICIARY OF NON-EXTENSION CHANGED FROM 30 DAYS TO 60 DAYS

All other terms and conditions remain unchanged.

Sincerely,

Gayla Strickler
Authorized Signature